ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage Control Board ("Board"), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2001) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 51 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of emergency rules that replace existing subsection 304.4 of Title 23 DCMR and impose a limit of ten (10) on the number of retailer's licenses Class CN, CT, CX, DN, DT, or DX issued in the Adams Morgan Moratorium Zone. The emergency rules also prohibit the holder of a retailer's license Class CR or Class DR located within the Adams Morgan Moratorium Zone from changing its license class to any non-restaurant license class except when the number of retailer's licenses Class CN, CT, CX, DN, DT, or DX in the Adams Morgan Moratorium Zone is fewer than ten (10).

On July 18, 2006, the Board received a request from Advisory Neighborhood Commission ("ANC") 1C to amend the existing Adams Morgan Moratorium Zone to: (1) impose a numerical cap of ten (10) on the number of Class CT and DT (Tavern) retailer's licenses permitted within the Adams Morgan Moratorium Zone at any one time; and (2) prohibit any additional conversions of Class CR and Class DR (Restaurant) retailer's licenses to CT and DT (Tavern) retailer's licenses within the Adams Morgan Moratorium Zone. The request of ANC 1C was filed after the lapse of the necessary two-year period to amend an existing moratorium, as set forth in D.C. Official Code § 25-351(f) (2001). In response to ANC 1C's petition request, the Board adopted emergency rules on August 2, 2006 to place a moratorium on the filing of any additional change of license class applications by holders of Class CR and Class DR retailer's licenses in the Adams Morgan Moratorium Zone pending the Board's holding of a public hearing, pursuant to D.C. Official Code § 25-354 (2001), on October 11, 2006. At the October 11, 2006 public hearing, the Board decided to keep the record open until October 25, 2006 for the submission of written comments on ANC 1C's request to amend the existing Adams Morgan Moratorium Zone.

During the hearing process, the Board received timely detailed testimony and comments from ANC 1C, the Kalorama Citizens Association ("KCA"), the Reed Cooke Neighborhood Association ("RCNA"), the Metropolitan Police Department ("MPD"), and nearby Adams Morgan residents and business owners. The Board found this testimony to warrant adopting ANC 1C's request to impose a limit of ten (10) on the number of Class CT or DT retailer's licenses permitted at any one time within the Adams Morgan Moratorium Zone based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2), 25-313(b)(3), and 25-314(c) (2001). Based upon comments received from the KCA and Board concerns that ANC 1C's proposal would still allow Class CR and Class DR (restaurants) to apply for Class CN or Class DN (Nightclub) or Class CX or Class DX (Club or Multipurpose Facility) licenses, which would circumvent the intent of ANC 1C's proposal, the Board is also including Class CN, CX, DN, and DX retailer's license categories in the numerical limit of ten (10). The

Board also found the testimony to warrant granting ANC 1C's request to prohibit the holders of retailer's licenses Class CR or Class DR located within the Adams Morgan Moratorium Zone from changing their license class to Class CT or Class DT (Tavern). Based upon the above, the Board is also prohibiting the holder of a retailer's license Class CR or Class DR from changing its license class to CN, CX, DN, or DX in the Adams Morgan Moratorium Zone except when the total number of retailer's licenses in all of these categories is fewer than ten (10).

In reaching its decision, the Board gave great weight to the written recommendations of ANC 1C as required by section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d)(3) (2001), as amended, and D.C. Official Code § 25-609 (2001). In reviewing the request of ANC 1C to amend the Adams Morgan Moratorium Zone, the Board finds based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001), that the testimony and evidence put forward by ANC 1C, MPD, the KCA, RCNA, and various individual residents located in or in proximity to the Adams Morgan Moratorium Zone reveals that significant problems with peace, order, and quiet, particularly with respect to late night noise, litter, rowdy behavior, and vehicular and pedestrian safety, as well as parking problems, continue to occur despite the presence of an existing moratorium in Adams Morgan. For example, both ANC 1C and the KCA displayed detailed videotapes that demonstrated acute problems with late night noise, public vomiting, and violent and rowdy behavior caused by patrons of ABC establishments in the Adams Morgan Moratorium Zone. The KCA videotape also established significant vehicular and pedestrian safety problems in the Adams Morgan Moratorium Zone. The testimony of MPD Inspector Patrick Burke, which the Board found very persuasive, indicated that the amount of alcohol served in the Adams Morgan Moratorium Zone can be directly attributed to a disproportionate number of calls for service for disorderly conduct, simple assaults, assaults, and other criminal activity even with MPD officers present. As a result, Inspector Burke strongly supported ANC 1C's request to amend the Adams Morgan Moratorium Zone. Written testimony submitted to the Board also established that the late night activity of ABC establishments, including taverns, is generating a substantial adverse impact on Adams Morgan residents located either within or in close proximity to the Adams Morgan Moratorium Zone. The Board did not find that the ABC establishments in the Adams Morgan Moratorium Zone are adversely affecting real property values in the surrounding area.

Currently, there are ten (10) Class CT or DT retailer's licenses in the Adams Morgan Moratorium Zone. The Board gave serious consideration to the request of both the KCA and RCNA to impose a limit of six (6) Class CT, CN, CX, DT, DN, or DX retailer's licenses in the Adams Morgan Moratorium Zone. However, the Board ultimately decided to impose a limit of ten (10) for these retailer's license categories as it found reasonable the rationale of ANC 1C that the cap limit should reflect the existing number of these licenses currently in existence within the Adams Morgan Moratorium Zone.

ANC 1C's July 18, 2006 moratorium petition also requests that the Board disapprove any additional class change conversion requests filed by the holders of Class CR and Class

DR licenses that are currently pending with the Board. Consistent with the Board's decision in its August 2, 2006 Notice of Emergency Rulemaking, the Board is not applying the class change restrictions contained in this rulemaking to the seven (7) pending change of license class applications that were filed with the Board prior to August 2, 2006. These seven (7) pending applications will go through the Board's usual administrative process and will receive careful scrutiny at protest hearings already scheduled or to be scheduled.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

This emergency action is necessary to ensure that the limitations placed by the Board on the filing of change of license class applications by the holders of Class CR and Class DR retailer's licenses to Class CN, CT, CX, DN, DT, and DX are not exceeded, which the Board has determined pursuant to D.C. Official Code §§ 25-313(b) and 25-314(c) (2001) would:

- (1) have an adverse effect on peace, order, and quiet, including noise and litter;
- (2) have an adverse effect on residential parking needs and vehicular and pedestrian safety; and
- (3) have a substantial adverse impact on residents living in adjacent residentially zoned districts.

These emergency rules were adopted by the Board on November 29, 2006. The rules became effective on that date. The emergency rules will expire 120 days from the date of effectiveness or upon publication of a Notice of Final Rulemaking in the <u>D.C. Register</u>, whichever occurs first. The Board also gives notice of its intent to adopt these proposed rules as final rules in not less than thirty (30) days from the date of publication of this notice in the <u>D.C. Register</u>.

Pursuant to D.C. Official Code § 25-211(b)(2) (2001), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until their approval by Council resolution during the ninety (90) day period of Council review.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing subsection 304.4 to read as follows:

The number of Retailer's licenses Class CN, CT, CX, DN, DT, or DX located within the Adams Morgan Moratorium Zone shall not exceed ten (10). The holder of a Retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone shall be prohibited from changing its license class except when the number of Retailer's licenses Class CN, CT, CX, DN, DT, or DX in the Adams Morgan Moratorium Zone is fewer than ten (10). Nothing in this subsection shall prohibit the Board from

approving a change of license class application that was filed with the Board by the holder of a retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone prior to August 2, 2006.

Copies of the proposed rulemaking can be obtained by contacting Fred Moosally, General Counsel, Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., 7th Floor, Washington, D.C. 20002. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of publication of this notice in the <u>D.C. Register</u>, to the above address.

BOARD OF REVIEW FOR ANTI-DEFICIENCY VIOLATIONS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Review for Anti-Deficiency Violations (the "Board"), pursuant to the authority set forth in Mayor's Order 2004-125, August 2, 2004, hereby gives notice of the adoption of the following emergency Guidelines (the "Guidelines") by adding a new Chapter 11 to Title I, DCMR. Pursuant to the District Anti-Deficiency Act of 2002, effective April 4, 2003 (D.C. Law 14-285; D.C. Official Code § 47.355.01 et seq. (2005 Repl.)) (the "Act"), the Board is to advise and make recommendations to the Mayor, the Chief Financial Officer, the Inspector General and the Council of the District of Columbia concerning reported violations of the Act by officers and employees of the District of Columbia government. The purpose of the Guidelines is to amend the Board's operating procedures regarding the Board's duties pursuant to the Act.

A Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on August 13, 2004. The Board is amending and re-publishing the Guidelines to reflect changes to the Act made pursuant to the Anti-Deficiency Act Revision Act of 2006, signed by the Mayor on December 28, 2006 (D.C. Act 16-652). The amendments to the Act affect the kinds of anti-deficiency violations subject to the Board's review and the procedures to be followed by the Board during any such review. Accordingly, to ensure that any investigations of employee conduct which may lead to termination of employment are conducted in a manner so as to immediately protect the public safety, welfare and morals, action was taken on January 17, 2007 to adopt the following amended Guidelines on an emergency basis. These emergency Guidelines will remain in effect for up to 120 days from January 17, 2007 or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Board, pursuant to the authority set forth in Mayor's Order 2004-125, dated August 2, 2004, hereby also gives notice of its intent to adopt the following Guidelines in not less than 30 days from the date of publication of this Notice in the *D.C. Register*. The purpose of the Guidelines is to implement the Board's operating procedures regarding the Board's duties pursuant to the Act. The Guidelines will create the following new Chapter 11 in Title I, DCMR, entitled "Guidelines of the Board of Review for Anti-Deficiency Violations."

CHAPTER 11 GUIDELINES OF THE BOARD OF REVIEW FOR ANTI-DEFICIENCY VIOLATIONS

1100 SOURCE OF AUTHORITY

The Board of Review for Anti-Deficiency Violations of the Government of the District of Columbia ("Board") was established by the Mayor of the

District of Columbia ("Mayor"), pursuant to the District Anti-Deficiency Act of 2002 ("Act"), as amended, effective April 4, 2003 (D.C. Law 14-285; D.C. Official Code § 47.355.01 et seq. (2005 Repl.)), Mayor's Order 2003-60, dated May 16, 2003, and Mayor's Order 2003-156, dated November 7, 2003.

These Guidelines are issued pursuant to the authority vested in the Mayor by sections 422(2), (6) and (11) of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2), (6) and (11) (2001). Pursuant to Mayor's Order 2004-125, dated August 2, 2004, the Mayor has delegated to the Board the authority to promulgate these Guidelines.

1101 PURPOSE

- The purpose of these Guidelines is to implement the authority delegated to the Board by establishing an effective, efficient, and fair system of independent review and resolution of reported violations of the Act.
- The purpose of the Board is to advise and make recommendations to the Mayor, the Chief Financial Officer ("CFO"), the Inspector General ("IG"), and the Council of the District of Columbia ("Council") with respect to reported anti-deficiency violations by officers and employees of the government of the District of Columbia ("District"). Because maintaining the fiscal integrity of the District government is of paramount importance, it is critical that reports of violations of the Act be evaluated by a credible, independent investigative board, which will assess culpability and recommend appropriate action.
- The Act does not grant the Board the authority to review, investigate, determine violations of or recommend action regarding violations of the District's procurement laws. In addition, although several of the prohibited actions contained in the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519 (2006), are repeated in the Act, the Act does not grant the Board the authority to review, investigate, determine violations of or recommend action regarding violations of the federal Anti-Deficiency Act.

1102 MEMBERS

The direction, control, and management of the affairs and funds of the Board shall be vested in the members, who shall pursue such policies and activities in accordance with the provisions of the relevant laws of the District of Columbia and the United States.

- Pursuant to Mayor's Order 2003-156, the Board is comprised of five (5)
 District government employees ("Members"), as follows: two (2)
 representatives who serve at the pleasure of the CFO, one (1) of whom
 shall serve as Chairperson of the Board; two (2) representatives who serve
 at the pleasure of the Mayor; and one (1) representative who serves at the
 pleasure of the IG.
- Each Member shall be appointed to a term of three (3) years. The Chairperson may excuse a Member from a meeting of the Board for an emergency reason. Any Member who fails to attend three (3) consecutive meetings shall be deemed removed from the Board, and a vacancy created. Such vacancies shall be filled by the appropriate appointing authority as outlined in section 1102.2.
- A Member may resign at any time by giving notice thereof in writing to that Member's appointing authority, with a courtesy copy to the Chairperson of the Board.
- A Member may serve beyond the end of his or her term until re-appointed, or replaced, by the appropriate appointing authority as outlined in section 1102.2. No person may serve more than two (2) full terms.
- The officers of the Board shall be a Chairperson and a Vice-Chairperson, and such other officers as may from time to time be deemed advisable by the Board. Unless otherwise provided in the Act or these Guidelines, such officers shall be chosen by a majority vote of the Board.
- Unless otherwise provided in the Act or these Guidelines, the officers of the Board shall hold their offices for such terms as shall be determined from time to time by the Board and shall exercise such powers and perform such duties as shall be specified by the Board and, if not inconsistent therewith, as are customarily exercised by corporate officers holding such offices.
- The officers of the Board shall hold office until their successors are chosen and qualified. Unless otherwise provided in the Act or these Guidelines, any officer may be removed at any time by a majority of the Members, with or without cause, and any vacancy occurring in any office may be filled by the vote of a majority of the Members.

1103 MEETINGS OF THE BOARD

The Chairperson of the Board shall preside at all meetings of the Board at which he or she is present and shall perform such other duties as may be required of him or her by the Board.

- The Vice-Chairperson of the Board shall, in the absence of the Chairperson, preside at meetings of the Board and shall perform such other duties as may be required of him or her by the Board.
- Meetings of the Board may be called at the discretion of the Chairperson or at the request of any two Members. At least forty-eight (48) hours in advance of each meeting of the Board, notice shall be given to each Member.
- Notice of a meeting of the Board shall specify the date, time and place of the meeting. The notice may be delivered by methods including, but not limited to, telephone, email, government mail or announcement at a previous meeting. A Member may waive notice of any meeting by written statement filed with the Secretary. Attendance at a meeting also shall constitute a waiver of notice.
- The Board shall convene within sixty (60) days of receipt of a notice of a violation to investigate the causes of the violation.
- Meetings of the Board shall be closed except to those requested to attend or as otherwise specified in these Guidelines.

1104 QUORUM

- 1104.1 Except as otherwise provided in the Act or in these Guidelines, three (3)

 Members shall constitute a quorum for the Board to conduct a meeting or for the transaction of business.
- No Member may vote on any matter by proxy or by any attorney-in-fact.
- No vacancy in Membership shall impair the right of a quorum to exercise all rights and perform all duties of the Board.
- Any Member may participate in a meeting of the Board, or a committee of the Board, by means of a conference telephone or by any means of communication by which all persons participating in the meeting are able to hear one another, and such participation shall constitute presence in person at the meeting.

1105 CONFLICT OF INTEREST

The Board shall consider all reported anti-deficiency violations in a fair and impartial manner. A Member who has a personal conflict, or the appearance thereof, in the resolution of any reported violation shall not participate in the Board's review of the matter. Examples of personal conflict include, but are not limited to: familial relationship or friendship

with a party or parties accused of the violation or making the accusation of the violation; having witnessed or participated in events material to the inquiry from a non-neutral perspective; being a party to the inquiry or having the potential of providing information relevant to the inquiry; or having a financial interest in the outcome of the inquiry.

- Any person involved in the reported violation may file a challenge for cause against a Member. The challenge must be filed with the Chairperson (or the Vice Chairperson if the Chairperson is challenged) in writing within ten (10) working days of the point at which the individual filing the challenge becomes aware of potential personal conflict of the
 - Member or prior to the reported violation being considered by the Board, whichever is earlier. The challenge must describe in detail the basis for the personal conflict.
- If a Member is challenged for cause, the Chairperson shall contact the challenged Member as soon as possible. If the Member agrees that the challenge is for good cause, or otherwise agrees to remove himself/herself from the particular inquiry, the Member shall remove himself/herself from the particular inquiry. If the challenged Member does not agree that the challenge is for good cause, the Chairperson shall poll the other Members, and if a Quorum agrees that the challenge is for good cause or otherwise removes himself/herself from the particular inquiry, the Chair shall notify the challenged Member and remove the Member from that inquiry. If a challenge to a Member is rejected under the above procedure, the written challenge and the Member's written response, as well as the official minutes of the meeting at which the matter was considered, shall be incorporated in the investigative file as part of the record.
- Should any Member be removed or remove himself/herself from consideration of a reported violation due to challenge or voluntary removal on the Member's own initiative, the matter shall proceed before a quorum of the Board.

1106 COMPENSATION

Members of the Board shall serve without compensation (beyond their salaries as employees of the District government), except that a Member may be reimbursed for reasonable expenses incurred in the authorized execution of official Board duties, if approved in advance by the CFO or his/her designee.

1107 ORGANIZATION

The Board may establish committees as needed, including standing committees. The Board shall determine who shall be members of any

such committees. Committees may include District government employees who are not Members, provided that each committee is chaired by a Member. Unless specified by the Board, the individual committees shall determine the dates, times, and locations of meetings and whether or not to keep records of committee meetings.

The Board may establish its own bylaws and rules of procedure.

1108 ADMINISTRATION

- The Office of the Chief Financial Officer ("OCFO") shall provide administrative and staff support to the Board.
- The OCFO shall designate an OCFO employee to serve as Staff Director of the Board. The Staff Director may designate an OCFO employee to serve as Secretary of the Board, as well as to coordinate administrative and substantive support from other District employees to the Board. Board staff will assist the Board in carrying out its duties and responsibilities, including providing the necessary support to the Board to obtain information needed to perform its review. The Board, however, shall not delegate core responsibilities, such as the assessment of culpability, the determination of any justification for a violation, the determination that no violation actually occurred or the recommendation of disciplinary or other action.
- The Secretary shall be responsible for keeping accurate minutes of the proceedings of all meetings of the Board. This includes providing administrative support associated with the needs of the Board, such as arranging meetings, and providing notices of meetings.
- Upon majority vote of the Members present at a duly called meeting at which a quorum is present, the Staff Director and the Secretary of the Board may be removed from these positions at any time, without cause.
- The Board shall continuously maintain in the District a principal office at such place as may be designated by the Members.
- The Board staff shall create a case file for each report, designate a case number, and enter the case in a database. The Chairperson or his or her designee will notify the Members when a report of a violation has been received and will schedule, in consultation with Members, the earliest possible date for the Members to meet.

1109 LEGAL ADVICE

- The Board may consult with and seek advice from the Office of the Attorney General ("OAG"), in coordination with the Office of General Counsel for the Chief Financial Officer, in the course of the Board's review of each reported violation.
- In making recommendations for disciplinary action, the Board may consult with and seek advice from the District of Columbia Office of Personnel and/or the applicable personnel authority for the subject agency.

1110 INVESTIGATIVE ASSISTANCE

The Board shall seek investigative assistance, as necessary, from the Office of the Inspector General (OIG), the OCFO, the OAG, and other agencies of the District government in the course of the Board's review of a reported violation.

1111 ACCESS TO DISTRICT OF COLUMBIA RECORDS

In executing its responsibilities, the Members and the representatives of and investigators for the Board are authorized to:

- (a) Access all facilities, files, and databases of District government agencies in order to obtain files, electronic and paper records, reports and documents, and other material available to District government agencies, which may relate to the Board's inquiry into a reported violation of the Act.
- (b) Request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Board, as provided in Mayor's Order 2003-156, from any District, federal, state, or local government agency.
- (c) Seek information from parties outside the District government, including government contractors, which may be relevant to an investigation.

1112 RESPONSIBILITIES OF EMPLOYEES OF THE DISTRICT OF COLUMBIA TO THE BOARD

Inquiries by the Board are official inquiries by the District Government.

All officers, employees, and members of boards, commissions, and councils of the District government are required to respond to questions truthfully, whether orally or in writing, and must provide documents and other matters of official interest when requested by a representative of the Board. No employee shall prevent or prohibit the Board from initiating,

carrying out, or completing any investigation within the jurisdiction of the Board.

Because all materials provided during employment by the District government are the property of the District government, an employee must provide all documents produced while on the job to the Board or its investigators as requested.

1113 VIOLATIONS

1113.1 For purposes of the Board, the term:

- (a) "Agency" means an agency, office, department, board, commission, or independent agency or instrumentality of the District government.
- (b) "Apportionment" means the division of an agency's appropriated budget authority by periods within a fiscal year.
- (c) "Appropriation" means authority to spend funds appropriated by Congress and financed by District revenues.
- (d) "Capital project" means the development, modernization, or replacement of facilities and infrastructure used for public purposes.
- (e) "Disbursement" means the outflow or payment of cash, whether by check or electronic transfer of funds.
- (f) "Employee" means an individual who performs a function of the District government, including a contract employee (excluding independent contractors), and who receives compensation for the performance of that function
- (g) "Encumbrance" means an amount of funds committed for the payment of goods and services ordered but not yet received.
- (h) "Expenditure" means a payment for goods or services received.
- (i) "Full Time Equivalent (FTE)" means an employment indicator that translates the total number of hours worked in a year by all employees, including part-time workers, to an equivalent number of work years. For example, one FTE equals 2,080 hours and .75 FTE equals 1,566 hours.

- (j) "Fund" means a budgeting and accounting device used to establish accounts for separating revenues and their related obligations, and expenditures for one purpose from those revenues, obligations, and expenditures for other purposes.
- (k) "Grant" means a contribution of assets (usually cash) by one government unit to another government unit or organization.

 Typically, these contributions are made to local governments from state and federal governments for specified purposes.
- (l) "Manager" means an individual chosen or appointed to manage, direct, or administer some affairs of the agency, including the expenditure of funds.
- (m) "Nonpersonal services" means a budget category that includes budget objects for reporting other than personnel-related expenditures. Nonpersonal services includes supplies, utilities, communications, and rent, other services and charges, subsidies and transfers, equipment rental, and debt service.
- (n) "Object class" means a budgetary classification that breaks down the general budget categories of personal services and nonpersonal services into more specific types of expenditure, such as Fringe Benefits (Object Class 14) or Supplies (Object Class 20).
- (o) "Obligations" means the amount of expenditure already made as well as the cost of commitments requiring future payments.
- (p) "Operating budget" means the budget that encompasses the day-to-day District government activities. The operating budget includes employee salaries, supplies, and other non-personnel items related to current activities. The operating budget also includes debt services and overhead costs related to daily operations.
- (q) "Personal services" means a budget category that includes budget objects for reporting personnel-related expenditures.
- (r) "Program" means the highest level, for budgeting and expenditure control, within the agency that the District government uses for a specific purpose for appropriated budget authority. A program may consist of multiple activities, which combined achieve the stated purpose and goals.
- (s) "Reprogramming" means a specific kind of authorized budget change to reallocate funds to or from an agency's budget, without a new appropriation.

- (t) "Revenues" means the annual income or receipts of the District from taxes, charges, grants, and investments.
- (u) "Spending plan" means an agency's projection by month of planned spending by object class, by fund.
- The following actions are defined as "violations" by the Act and in these Guidelines and must be reported promptly to the CFO (or to the IG if there would be a conflict of interest for the CFO) for referral to the Board:
 - (a) Making or authorizing an expenditure or obligation exceeding an amount available in an appropriation for an agency or fund.
 - (1) For purposes of operating appropriations, the Act will be enforced at the levels of agency, fund, and program. For grants and Special Purpose Revenue, "fund" means each grant and Special Purpose Revenue fund detail, respectively.
 - (2) For purposes of capital appropriations, the Act will be enforced at the levels of implementing agency, fund, and project. In accordance with applicable law, agencies may make capital expenditures up to the amount available, by fund and project, in all prior and current years.
 - (b) Obligating the District for the payment of money before an appropriation is made or before a certification of the availability of funds is made, unless authorized by law.
 - (c) Approving a disbursement without appropriate authorization. Appropriate authorization means:
 - (1) The signature of an authorizing official of the agency;
 - (2) The signature of the agency chief financial officer certifying the availability of funds;
 - (3) The signature of a contracting officer indicating through a valid purchase order or contract that the disbursement is authorized; and
 - (4) A valid invoice.
 - (d) Deferring the recording of a transaction incurred in the current fiscal year to a future fiscal year.

- (e) Allowing an expenditure or obligation to exceed apportioned amounts.
 - (1) For purposes of operating appropriations, the Act will be enforced at the level of agency, by fund by quarter.
 - (2) Adherence to apportionment will be defined as not exceeding apportionment. All overspending will be recognized as a violation of the Act.
- (f) Not submitting a required plan or projection in a timely manner.
- (g) Knowingly reporting incorrectly on spending to date or on projected total annual spending.
- (h) Failing to adhere to a spending plan for any of the first three (3) quarters of a fiscal year through overspending that is greater than (A) five percent (5%) of the agency's budget, or (B) one million dollars (\$1,000,000), regardless of the percentage. For purposes of operating appropriations, the Act will be enforced at the level of agency and fund.

1114 PROCEDURES FOR REPORTS TO THE BOARD

- The standard process for the Board learning of a violation is through the receipt of a report of a violation from the CFO on a form that the Board shall prescribe. However, the Board may also receive a report from the IG in instances where there is a conflict of interest for the CFO. The CFO (or IG) shall conduct a preliminary investigation and provide the Board, at a minimum, with the following information:
 - (a) The appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred;
 - (b) The name(s), position(s), and agency(ies) of the employee(s) involved with the violation;
 - (c) All facts pertaining to the violation, including the type of violation (for example, over-obligation of an appropriation), the primary reason or cause, valid justification, and any germane report by the agency's fiscal official and/or the agency's counsel;
 - (d) A statement from the responsible employee(s) that fully addresses the employee's actions in the matter so that the Board has the benefit of the employee's description of what transpired, the basis

for the employee's action, mitigating factors, justification, and other relevant factors when it considers culpability and recommends appropriate administrative action. If an employee declines to provide a written statement, the agency head (or Deputy Mayor, if the agency head is the alleged violator) shall provide a written statement to that effect;

- (i) In the case where an employee is suspected of willfully and knowingly violating the Act, a statement as to whether, and when, this matter has been reported to the IG and/or the United States Attorney for the District of Columbia;
- (j) A statement regarding the adequacy of the system of administrative controls;
- (k) A statement of any additional action taken by, or at the direction of, the agency head (or Deputy Mayor, as appropriate), including any new safeguards provided to prevent recurrence of the same type of violation; and
- (1) If another agency is involved, a statement concerning the steps taken to coordinate the report with the other agency.
- In extraordinary circumstances, the Board may vote to accept a report from an alternative source.

1115 REVIEW OF REPORTS

- Upon receipt of a report of a violation, and in any event within sixty (60) days of learning of a violation, the Chairperson shall convene the Board to investigate the causes of the violation.
- If the report is complete, and if the Board does not determine that no violation actually occurred, the Board will proceed to assess the culpability of the responsible employees and recommend appropriate disciplinary action.
- 1115.3 If the report is not complete or if facts in dispute require further investigation, the Board will determine whether to direct additional inquiry.
- The Board shall promptly notify an employee that a violation has been reported, that the Board has received the report, and that the matter is under the purview of the Board. This notification shall describe the role of the Board and any rights that the employee may have regarding the Board's investigation of the reported violation.

- When the Board meets to evaluate a report, no employees other than members of the Board are entitled to be present. However, upon request by an employee who is subject to disciplinary action under the Act, the Board may allow the employee to appear before the Board. The Board may require any employee of the District government, including any employee who is the subject of a report, to appear before the Board.
- 1116 ASSESSMENT AND EVALUATION OF PENALTIES
- In recommending disciplinary action, the Board shall consult with legal and personnel professionals, as needed.
- The Board may recommend that no action be taken where it finds a justification for the violation. Justification may include overspending as a result of court orders, entitlements, or explicit authorization in an appropriations act.
- The decision of the Board to adopt a report of its findings and recommendations is determined by an affirmative vote of at least three (3) Members present.
- The Board has adopted a table of penalties for violations, intended to be used as a non-binding guide that categorizes violations under the three (3) broad headings of Reporting, Budget Adherence, and Accounting and Disbursement. Within each category, the Board has prescribed penalties for first, second and third violations, including: a letter of warning, official reprimand, ten (10)-day suspension, demotion, and termination of employment (removal). [See "Table of Appropriate Penalties", attached.]

1117 REFERRAL OF POTENTIAL CRIMINAL VIOLATIONS

- The Board shall report any reported violation reasonably believed to be a violation of criminal law to the IG, in accordance with established policies and procedures. The Board shall send copies of all relevant files to the IG (or the U.S. Attorney for the District of Columbia), maintain a record of each referral, and ascertain and record the disposition of each referred matter.
- If the IG declines in writing to pursue the matter, the Board shall resume consideration of the violation.

1118 REPORTING RESULTS OF BOARD'S INVESTIGATION

The Chairperson shall issue the Board's findings and recommendations to the agency head or Deputy Mayor involved.

- Within thirty (30) days of receipt of the findings and recommendations of the Board, the agency or Deputy Mayor shall notify the Board in writing of the actions taken or to be taken.
- Upon receipt of the agency's or Deputy Mayor's response, the Board shall issue a report, determined by an affirmative vote of at least three Members present, to the Council indicating the violation, the name, and the title of the employee or employees who were responsible for the violation, any justification, and a statement of the action taken or proposed to be taken.

Table of Appropriate Penalties

Violation	First Offense	Second	Third Offense
		Offense	

Reporting

Not submitting a required	Tier 1	Tier 1	Tier 2
plan or projection in a timely	e.g., Letter of	e.g., Letter of	e.g., Official
manner	Warning	Warning	Reprimand
Knowingly reporting	Tier 1	Tier 2	Tier 3
incorrectly on spending to	e.g., Letter of	e.g., Official	e.g., 10 Day
date or on projected total annual spending	Warning	Reprimand	Suspension

Budget Adherence

Failing to adhere to a spending	Tier 1	Tier 1	Tier 2
plan	e.g., Letter of	e.g., Letter of	e.g., Official
	Warning	Warning	Reprimand
Allowing an expenditure or	Tier 1	Tier 2	Tier 3
obligation to exceed	e.g., Letter of	e.g., Official	e.g., 10 Day
apportioned	Warning	Reprimand	Suspension
amounts			
Making or authorizing an expenditure exceeding an amount available in an			
appropriation or fund			
Program level	Tier 1	Tier 2	Tier 3
	e.g., Letter of	e.g., Official	e.g., 10 Day
	Warning	Reprimand	Suspension
Agency level	Tier 2	Tier 2	Tier 3
	e.g., Official	e.g.,	e.g., Demotion
	Reprimand	Suspension	/ Removal
Obligating the District for the	Tier 1	Tier 2	Tier 3
payment of money before an	e.g., Letter of	e.g., Official	e.g., 10 Day
appropriation is made or	Warning	Reprimand	Suspension
before a certification of the			
availability of funding is made	·		
unless authorized by law	1		

Accounting and Disbursement

Approving a disbursement	Tier 1	Tier 2	Tier 3
without appropriate	e.g., Letter of	e.g., Official	e.g., 10 Day
authorization	Warning	Reprimand	Suspension
Defeming recording a	Tier 1	Tier 2	Tier 3
transaction incurred in the	e.g., Letter of	e.g., Official	e.g., 10 Day
current fiscal year to a future	Warning	Reprimand	Suspension
fiscal year		•	

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All persons desiring to comment on the subject matter of the emergency and proposed Guidelines should file comments in writing not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Tisha Edwards, Board Secretary, Office of Integrity and Oversight, 1275 K Street, N.W., Suite 500, Washington, D.C. 20005. Copies of these emergency and proposed Guidelines may be obtained without charge at the above address.